

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**MICHAEL S. ROBINSON,**

**Petitioner,**

**v.**

**JAMES HAVILAND, WARDEN,**

**Respondent.**

**CASE NO. 2:17-CV-00126**

**CHIEF JUDGE EDMUND A. SARGUS, JR.**

**MAGISTRATE JUDGE KEMP**

**OPINION AND ORDER**

On March 21, 2017, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that this action be transferred to the United States Court of Appeals for the Sixth Circuit as a successive petition. (Doc. 5.) Petitioner has filed an *Objection* to the Magistrate Judge's *Report and Recommendation*. (Doc. 8.) Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons that follow, Petitioner's *Objection* (Doc. 8) is **OVERRULED**. The *Report and Recommendation* (Doc. 5) is **ADOPTED** and **AFFIRMED**. This action is hereby **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit as successive.

This is Petitioner's second petition under 28 U.S.C. § 2254 challenging his 1992 convictions in the Franklin County Court of Common Pleas on two counts of aggravated murder with firearm specifications. He asserts that he was denied due process and equal protection because the trial court improperly sentenced him (claim one) and that he was denied the effective assistance of trial and appellate counsel (claim two). On August 14, 2000, the Court dismissed


Petitioner's prior 2254 petition as time-barred. *See Robinson v. Moore*, No. 2:99-cv-00727 (S.D. Ohio Aug. 14, 2000).

Petitioner, however, objects to the Magistrate Judge's recommendation that this case be transferred to Sixth Circuit for authorization for filing as successive as depriving him of the right to due process and equal protection. Petitioner argues that this case does not constitute a successive petition, because he does not now raise the same issues that he did previously. Petitioner also indicates that he has filed a request for permission to file a successive petition with the United States Court of Appeals.

Regardless, this action plainly constitutes a successive petition. Further, as discussed in the Magistrate Judge's *Report and Recommendation*, this Court therefore lacks jurisdiction to entertain this second or successive § 2254 petition absent authorization from the United States Court of Appeals. *See* 28 U.S.C. § 2244(b)(3)(A); *In re Sims*, 111 F.3d 45, 47 (6<sup>th</sup> Cir. 1997).

Therefore, Petitioner's *Objection* (Doc. 8) is **OVERRULED**. The *Report and Recommendation* (Doc. 5) is **ADOPTED** and **AFFIRMED**. This action is hereby **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit as successive.

**IT IS SO ORDERED.**

 6-2-2017  
EDMUND A. SARGUS, JR.  
Chief United States District Judge